IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2747 OF 2006
IN
CASE NO.5/I & R/2006
IN
M.E.C.R. NO.3 OF 2006

Trilokchand Malhotra — Petitioner
vs.
State of Maharahstra & anr. — Respondents

Mr.J.A. Udaypuri with Ms.S.P.Trivedi i/b.M/s.Bharat & Co. for the petitioner.

Mr.D.S.Mhaispurkar, APP for State.

Mr.R.C.Tripathi for respondent 2.

Mr.Bhoopinder Singh Dogra-respondent 2 present in Court.

CORAM : SMT.RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 29th January, 2007

P.C.

. The petitioner is the original accused in Case No.5/I & R/2006 (M.E.C.R.No.3/2006) pending in the Metropolitan Magistrate, 22nd Court at Andheri. Respondent 2 is the original complainant (complainant for convenience). The case of the complainant appears to be that the petitioner had purchased a flat from him under an agreement of sale. Possession of the said flat was handed over to the petitioner. However, the petitioner had not paid the full consideration of the said flat. According to the complainant, the petitioner

unilaterally registered the sale deed. Though complainant demanded the full consideration the petitioner refused to pay the same. It is on these allegations that a complaint came to be filed with the Oshiwara Police Station, Mumbai. According to the complainant, Oshiwara Police Station did not register any offence. Hence, he filed a complaint in the Metropolitan Magistrate 22nd Court at Andheri in September, 2006. The learned Magistrate passed an order under Section 156(3) of the Code of Criminal Procedure, 1973.

2. It appears that in the meantime the petitioner and the complainant amicably settled their dispute. The petitioner is prepared to pay the remaining consideration amount of Rs.20 lakhs to the complainant. In fact a draft drawn in favour of the complainant in the sum of Rs.20 lakhs has been brought to this Court today. On 19.10.2006 an application for withdrawal of the complaint was filed by the complainant before the learned Metropolitan Magistrate in view of the settlement. To the said application, Consent Terms duly signed by the complainant and the petitioner and their respective Advocates were also annexed. The said Consent Terms indicate the nature of the settlement. In view of the settlement the petitioner has sought quashing of the pending complaint and the criminal case.

4. In view of the statements made by the learned counsel for the parties that the parties have settled the dispute and having seen a copy of the Consent Terms filed in the trial Court, we had on the last occasion directed the complainant to make an appropriate application before the learned Metropolitan Magistrate stating that the parties had amicably resolved the dispute. We had expressed a hope that the learned Magistrate will pass an appropriate order in accordance with law as expeditiously as possible if any application is made before him. It appears that accordingly an application was filed before the learned Magistrate. We are informed that the petitioner and complainant remained present before the learned Magistrate. Their respective counsel were also present before the learned Magistrate. We are distressed to note that instead of passing orders in accordance with law, the learned Magistrate chose to adjourn the matter to 25th April, 2007. In a matter of this type where the parties have settled their dispute and where the complainant had appeared before the learned Magistrate and told him that he does not want to prosecute the matter further, the learned Magistrate ought to have followed such procedure as is prescribed in law at the earliest rather than adjourning the case to April 2007. This is more so because the complainant is Non-Resident Indian and the

learned Magistrate was informed that the complainant had to leave India.

5. In the circumstances of the case and in the light of the judgment of the Supreme Court in **B.S.Joshi and others v. State of Haryana & Anr., (2003) 4 SCC 675,** and the judgments of this Court in (i) Jasmine Vipul Bhatia & Ors. v. State of Maharashtra, 2004 All MR (Cri.) 1908, (ii) Mansur A. Khan v. State of Maharashtra & Ors., 2004 All MR (Cri) 1911, and (iii) Bhushan s/o.Subhash Naphade & ors. v. State of Maharashtra & Anr., 2005 All MR (Cri.) 3041, we have no option but to quash the pending prosecution which in our opinion has become a lame prosecution. We have interviewed the complainant today. The complainant has told us that in view of the fact that a demand draft in the sum of Rs.20 lakhs is being handed over to him, he does not want to prosecute the pending complaint. The petitioner is also present in the Court and he has confirmed that the matter is settled. In the Court today, the demand draft drawn in favour of complainant in the sum of Rs.20 lakhs is handed over by the learned counsel for the petitioner to the learned counsel for the complainant who has handed over the same to the complainant. The complainant has accepted the said draft. The complainant has gone through the transfer forms, Power of Attorney and Indemnity Bonds. Having

gone through all the documents, he has put his signature thereon in Court.

6. In view of this, Case No.5/I & R/2006 which is converted into M.E.C.R. No. 3 of 2006 pending on the file of learned Metropolitan Magistrate 22nd Court, at Andheri is quashed. Petition stands disposed of in the aforestated terms. Needless to say that if any original documents are with the police, they shall hand over the same to the petitioner.

7. In view of disposal of writ petition, Criminal Application No.30/2007 shall also stands disposed of.

[SMT.RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]